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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 TIM LAMAN, as an individual,
12
13 Plaintiff,

14 vs.

15 LONELY PLANET GLOBAL, INC., a
16 Delaware Corporation; VIATOR, INC., a
17 Delaware Corporation; and DOES 1-10,
18 inclusive,
19 Defendants.

Case No.:

**PLAINTIFF'S COMPLAINT FOR
COPYRIGHT INFRINGEMENT
AND VIOLATION OF 17 USC 1202**

Jury Trial Demanded

20
21 Plaintiff Tim Laman, by and through his undersigned attorneys, hereby
22 prays to this honorable Court for relief based on the following:
23

24 **JURISDICTION AND VENUE**

- 25 1. This action arises under the Copyright Act of 1976.
26 2. This court has jurisdiction under 28 U.S.C. § 1331 and 1338 (a) and
27 (b).
28

1 3. Venue is proper under 28 U.S.C. § 1391(c) and 1400(a) because a
2 substantial part of the acts and omissions giving rise to the claims occurred here.

3 **PARTIES**

4 4. Plaintiff is an individual residing in New York, New York.

5 5. Plaintiff is informed and believes and thereon alleges that Defendant
6 LONELY PLANET GLOBAL, INC. is a corporation organized in the state of
7 Delaware, and does business in and with the State of California, with an office
8 located at 1260 North West Street, Wilson, Wyoming 83014.

9 6. Plaintiff is informed and believes and thereon alleges that Defendant
10 VIATOR, INC. is a limited liability company organized in the state of Delaware
11 and does business in and with the State of California, with an office located at 360
12 3rd Street, Suite 400, San Francisco, California 94017.

13 7. Defendants Does 1 through 10, inclusive, are other parties not yet
14 identified who have infringed Plaintiff's copyrights, have contributed to the
15 infringement of Plaintiff's copyrights, or have engaged in one or more of the
16 wrongful practices alleged herein. Their true names, whether corporate, individual
17 or otherwise, are presently unknown to Plaintiff, who therefore sues said
18 Defendants by such fictitious names, and will seek leave to amend this Complaint
19 to show their true names and capacities when same have been ascertained.

20 8. Plaintiff is informed and believes and thereon alleges that at all times
21 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
22 manager, principal, alter-ego, and/or employee of the remaining Defendants and
23 was at all times acting within the scope of such agency, affiliation, alter-ego
24 relationship and/or employment; and actively participated in or subsequently
25 ratified and adopted, or both, each and all of the acts or conduct alleged, with full
26 knowledge of all the facts and circumstances, including, but not limited to, full
27
28

1 knowledge of each and every violation of Plaintiff's rights and the damages to
 2 Plaintiff's proximately caused thereby.

3 **CLAIMS RELATED TO SUBJECT PHOTOGRAPHY**

4 9. Plaintiff Tim Laman is an accomplished and critically acclaimed field
 5 biologist and wildlife photojournalist. He is a contributing photographer for
 6 National Geographic magazine, and films for the BBC Natural History Unit and
 7 Cornell Lab of Ornithology. He is an Associate of Harvard University's Museum
 8 of Comparative Zoology, A Fellow of the Explorer's Club, a founding member of
 9 the International League of Conservation Photographers, and co-founder of Cornell
 10 Lab of Ornithology's Birds-of-Paradise Project. He has won numerous awards,
 11 including the North American Nature Photography Association - Nature
 12 Photographer of the Year 2009, Nature's Best Photography Awards, and Wildlife
 13 Photographer of the Year.
 14

15 10. Plaintiff created and exclusively owns the photography depicted in
 16 **Exhibit A** attached hereto. This work will be called the "Subject Photography"
 17 herein.

18 11. Plaintiff has registered the Subject Photography with the United
 19 States Copyright Office.

20 12. Defendants, and each of them, have willfully copied, reproduced,
 21 displayed, and distributed the Infringing Content for financial benefit and without
 22 Plaintiff's consent. Certain examples of the foregoing can be seen in the screen
 23 captures and or URLs depicted in **Exhibit B** hereto. Said material will be referred
 24 to as "Infringing Content" herein.

25 13. On information and belief it is alleged that Defendant VIATOR, INC.
 26 purported to license or otherwise transfer rights in the Subject Photography to one
 27 or more Defendants and did so with knowledge that it lacked the rights to do so.
 28

1 14. Plaintiff did not consent to the aforementioned use of the Subject
2 Photography.

3 **FIRST CLAIM FOR RELIEF**

4 (For Copyright Infringement – Against all Defendants, and Each)

5 15. Plaintiff repeats, re-alleges, and incorporates herein by reference as
6 though fully set forth, the allegations contained in the preceding paragraphs.

7 16. Plaintiff alleges on information and belief that Defendants, and each
8 of them, accessed the Subject Photography by without limitation, viewing the
9 Subject Photography on Plaintiff's website or social media profiles, on other sites
10 online, or in physical publications. The identicality of the copying also show
11 access.

12 17. Plaintiff alleges on information and belief that Defendants, and each
13 of them, copied, reproduced, displayed, and distributed the Subject Photography to
14 one another and/or online. Certain examples of the foregoing can be seen in the
15 screen captures attached hereto as **Exhibit B**.

16 18. Plaintiff alleges on information and belief that Defendants, and each
17 of them, infringed Plaintiff's copyrights by creating infringing derivative works
18 from the Subject Photography and publishing same to the public.

19 19. Due to Defendants', and each of their, acts of infringement, Plaintiff
20 has suffered general and special damages in an amount to be established at trial.

21 20. Due to Defendants' acts of copyright infringement as alleged herein,
22 Defendants, and each of them, have obtained direct and indirect profits they would
23 not otherwise have realized but for their infringement of Plaintiff's rights in the
24 Subject Photography. As such, Plaintiff is entitled to disgorgement of Defendants'
25 profits directly and indirectly attributable to Defendants' infringement of Plaintiff's
26 rights in the Subject Photography in an amount to be established at trial.
27
28

1 21. Plaintiff alleges on information and belief that Defendants, and each
2 of them, have committed acts of copyright infringement, as alleged above, which
3 were willful, intentional and malicious, which further subjects Defendants, and
4 each of them, to liability for statutory damages under Section 504(c)(2) of the
5 Copyright Act in the sum of up to \$150,000.00 per infringement and/or a
6 preclusion from asserting certain equitable and other defenses.

7 **SECOND CLAIM FOR RELIEF**

8 (For Vicarious and/Contributory Copyright Infringement – Against all Defendants,
9 and Each)

10 22. Plaintiff repeats, re-alleges, and incorporates herein by reference as
11 though fully set forth, the allegations contained in the preceding paragraphs.

12 23. Plaintiff alleges on information and belief that Defendants knowingly
13 induced, participated in, aided and abetted in and profited from the illegal
14 reproduction and distribution of the Subject Photography as alleged hereinabove.
15 Such conduct included, without limitation, publishing photographs obtained from
16 third parties that Defendant(s) knew, or should have known, were not authorized to
17 be published by Defendant(s); publishing the Infringing Content on affiliate, third-
18 party, and social media sites; and distributing the Infringing Content to third-
19 parties for further publication.

20 24. Plaintiff alleges on information and belief that Defendants, and each
21 of them, are vicariously liable for the infringement alleged herein because they had
22 the right and ability to supervise the infringing conduct and because they had a
23 direct financial interest in the infringing conduct. Specifically, Defendants, and
24 each of them, received revenue in connection with the Infringing Content, and
25 were able to supervise the distribution, broadcast, and publication of said content.
26
27
28

1 25. By reason of the Defendants', and each of their, acts of contributory
2 and vicarious infringement as alleged above, Plaintiff has suffered general and
3 special damages in an amount to be established at trial.

4 26. Due to Defendants' acts of copyright infringement as alleged herein,
5 Defendants, and each of them, have obtained direct and indirect profits they would
6 not otherwise have realized but for their infringement of Plaintiff's rights in the
7 Subject Photography. As such, Plaintiff is entitled to disgorgement of Defendants'
8 profits directly and indirectly attributable to Defendants' infringement of their
9 rights in the Subject Photography, in an amount to be established at trial.

10 27. Plaintiff alleges on information and belief that Defendants, and each
11 of them, have committed acts of copyright infringement, as alleged above, which
12 were willful, intentional and malicious, which further subjects Defendants, and
13 each of them, to liability for statutory damages under Section 504(c)(2) of the
14 Copyright Act in the sum of up to \$150,000.00 per infringement and/or a
15 preclusion from asserting certain equitable and other defenses.

16
17 **THIRD CLAIM FOR RELIEF**

18 (For Violations of the 17 U.S.C. §1202 – Against all Defendants, and Each)

19 28. Plaintiff repeats, re-alleges, and incorporates herein by reference as
20 though fully set forth, the allegations contained in the preceding paragraphs.

21 29. The Subject Photography were routinely published with attribution,
22 credit, and other copyright management information identifying Plaintiff as the
23 author,

24 30. Plaintiff alleges on information and belief that Defendants, and each
25 of them, removed Plaintiff's copyright management information, as described
26 above, from the Subject Photography, and/or added false copyright management
27 information to the Subject Photography, before distributing and publishing same.
28

33. When Defendants distributed and published the Subject Photography, they knowingly provided and/or distributed false copyright management information in violation of 17 U.S.C. § 1202(a). As a result of the foregoing, Plaintiff has been damaged and may recover those damages as well as Defendants' profits, and/or statutory damages, and attorneys' fees under 17 U.S.C. § 1203.

Wherefore, Plaintiff prays for judgment as follows:

- a. That Defendants, and each of them, as well as their employees, agents, or anyone acting in concert with them, be enjoined from infringing Plaintiff's copyrights in the Subject Photography, including without limitation an order requiring Defendants, and each of them, to remove any content incorporating, in whole or in part, the Subject Photography from any print, web, or other publication owned, operated, or controlled by any Defendant.
- b. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants, and each of them, through their infringement, the

1 exact sum to be proven at the time of trial, and, to the extent available,
2 statutory damages as available under the 17 U.S.C. § 504 and other
3 applicable law.

- 4 c. That a constructive trust be entered over any revenues or other
5 proceeds realized by Defendants, and each of them, through their
6 infringement of Plaintiff's intellectual property rights;
7 d. That Plaintiff be awarded his attorneys' fees as available under the
8 Copyright Act U.S.C. § 505 and/or §1203;
9 d. That Plaintiff be awarded his costs and fees;
10 e. That Plaintiff be awarded statutory and enhanced damages;
11 f. That Plaintiff be awarded pre-judgment interest as allowed by law;
12 and
13 h. That Plaintiff be awarded further legal and equitable relief as deemed
14 proper.
15

16 **Plaintiff demands a jury trial on all issues so triable pursuant to**
17 **Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.**
18

19 Respectfully submitted,

20 

21
22 Dated: February 1, 2021

23 By: _____
24 Scott Alan Burroughs, Esq.
25 Justin M. Gomes, Esq.
26 DONIGER / BURROUGHS
27 Attorneys for Plaintiff
28

Exhibit A

SUBJECT PHOTOGRAPHY



Exhibit B**INFRINGING CONTENT**

<https://www.lonelyplanet.com/indonesia/jakarta/information/papua-new-guinea-embassy/a/poi-inf/1225898/356569>

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Asia > Indonesia > Jakarta > Information

Papua New Guinea Embassy

Embassy in South Jakarta

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<https://www.lonelyplanet.com/indonesia/kalimantan/pontianak/restaurants/kapuas-riverside-restaurant/a/poi-eat/1595048/1333750> 10/21/2020

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Asia > Indonesia > Pontianak > Restaurants

Kapuas Riverside Restaurant

Indonesian in Pontianak

The overwater restaurant at the [Grand Kartika](#) has one of the best outlooks in the city. Watch the ferries cross Sungai Kapuas over a cold beer, or explore the reasonably priced menu of Western and Indonesian dishes, including crab and salted-fish fried rice, local river carp and spaghetti bolognese.

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<https://www.lonelyplanet.com/indonesia/kalimantan/pontianak/attractions/kapuas-indah-building/a/poi-sig/1333386/1333750>

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Kapuas Indah Building

Landmark in Pontianak

Speedboats to Sukadana leave from behind this landmark giant tin shed containing a chaotic market.

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<https://www.lonelyplanet.com/indonesia/kalimantan/pontianak/attractions/kampung-beting/a/poi-sig/1595217/1333750> 10/21/2020

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Kampung Beting

Area in Pontianak

This redeveloped section of riverfront between the Sungai Kapuas and Sungai Ladak is a good place to explore 'old Pontianak', with colourful village houses crammed together and a new riverside promenade making it easy to walk.

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Related tour



<https://www.lonelyplanet.com/indonesia/kalimantan/pontianak/tours/mount-of-palung-national-park-borneo-explore-5-days/a/pa-tou/v-104471P3/1333750>

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Asia > Indonesia > Pontianak > Tours

Mount of Palung National Park Borneo Explore 5days

Multi-day & Extended Tours, Ketapang Rahadi Usman Airport or Lobby
Hotel at Ketapang City to null



Image by Viator

<https://www.lonelyplanet.com/indonesia/kalimantan/pontianak/attractions/museum-provinsi-kalimantan-barat/a/poi-sig/1220777/1333750>

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Museum Provinsi Kalimantan Ba

Museum in Pontianak

In an imposing building this well-maintained collection of artefacts provides an informative English-language overview of local Dayak, Malay and Chinese cultures.

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<https://www.lonelyplanet.com/indonesia/jakarta/information/central-immigration-office/a/poi-inf/1030191/356569>

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Asia > Indonesia > Jakarta > Information

Central Immigration Office

Immigration in South Jakarta

Provides information on visa extensions and renewals.

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<https://www.lonelyplanet.com/indonesia/kalimantan/pontianak/tours/mount-of-palung-national-park-borneo-explore-5-days/a/pa-tou/v-104471P3/1333750>

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Mount of Palung National Park Borneo Explore 5days

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Image by Viator